

§ 536.207

5 CFR Ch. I (1-1-07 Edition)

the rules in this section to determine the employee's rate of basic pay.

(2) This section does not apply to an employee whose entitlement to grade retention is terminated under one of the conditions in § 536.208. (See § 536.208(d).)

(b) *Preexisting rate within a range.* If an employee is entitled to a rate of basic pay within the applicable rate range before the action resulting in application of this section, the employee is entitled to the rate(s) of basic pay in the applicable pay schedule(s) for the employee's position of record after the action (including the retained grade) which correspond to the employee's grade and step (or rate) immediately before the action. The employee's payable rate is the corresponding rate in the highest applicable rate range for the employee's position of record after the action (including the retained grade). If an employee's rate of basic pay otherwise would be reduced because of placement under a lower-paying pay schedule (excluding any reduction that results from a geographic conversion), the employee would be eligible for pay retention under subpart C of this part to the same extent as other employees holding the same position of record whose actual grade is the same as the employee's retained grade.

(c) *Preexisting retained or saved rate.*

(1) If an employee is entitled to a retained rate immediately before the action resulting in application of this section, the agency must determine the employee's payable rate of basic pay under §§ 536.303 and 536.304.

(2) If an employee is entitled to a saved rate under 5 CFR 359.705, the agency must determine the employee's payable rate of basic pay under that section.

(d) *Order of processing pay actions.*

When an action resulting in application of this section takes effect on the same effective date as other pay actions that affect an employee's rate of basic pay (e.g., within-grade increase), the actions will be processed in the order prescribed in the rules governing the covered pay system of the employee's position of record (e.g., 5 CFR 531.206 for GS positions and 5 CFR 532.413 for Federal Wage System positions).

§ 536.207 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of an entitlement under § 536.201 ceases if any of the following conditions occurs at any time after the employee receives written notice of the reduction in grade, but before the commencement of the 2-year period of grade retention:

(1) The employee has a break in service of 1 workday or more;

(2) The employee is reduced in grade for personal cause or at the employee's request (based on the actual grade of the employee's position rather than the employee's retained grade and, when a movement to a different covered pay system is involved, a comparison of representative rates under § 536.105);

(3) The employee moves to a position under a covered pay system with a grade that is equal to or higher than the retained grade (as determined under § 536.105), excluding a temporary promotion;

(4) The employee declines a reasonable offer of a position with a grade equal to or higher than the retained grade (as determined under §§ 536.104 and 536.105);

(5) The employee elects in writing to terminate the benefits of grade retention; or

(6) The employee moves to a position not under a covered pay system.

(b) Eligibility for grade retention as a result of entitlement under § 536.202 ceases if any of the following conditions occurs at any time after management informs the employee of an impending reorganization or reclassification that will or could result in a reduction in grade, but before the commencement of the 2-year period of grade retention:

(1) Any of the conditions listed in paragraph (a) of this section except that an employee's request for placement in a lower-graded position, in lieu of displacing another employee at his or her grade under reduction in force procedures, is not a declination of a reasonable offer for grade retention purposes; or

(2) The employee fails to enroll in, or to comply with reasonable written requirements established to assure full

consideration under, a program providing priority consideration for placement.

(c) If an employee loses eligibility for grade retention under this section, the employee's rate of basic pay must be set in accordance with the pay-setting rules and pay rates applicable to the employee's position of record (e.g., 5 CFR part 531, subpart B, for GS positions). An employee is not eligible for pay retention under subpart C of this part based on an action that provided eligibility for grade retention if the employee elects to terminate mandatory eligibility for grade retention under paragraph (a)(5) of this section.

§ 536.208 Termination of grade retention.

(a) Grade retention under § 536.201 terminates if any of the conditions listed in § 536.207(a) occurs after commencement of the 2-year period of grade retention.

(b) Grade retention under § 536.202 terminates if any of the conditions listed in § 536.207(b) occurs after the commencement of the 2-year period of grade retention.

(c) Termination of grade retention benefits takes effect—

(1) At the end of the day before placement if the termination is the result of the employee's placement in another position; or

(2) At the end of last day of the pay period in which the employee—

(i) Declines a reasonable offer;

(ii) Elects to terminate grade retention benefits; or

(iii) Fails to enroll in, or comply with reasonable written requirements established to assure full consideration under, a program providing priority consideration for placement.

(d) If an employee's entitlement to grade retention terminates under this section, the employee's rate of basic pay must be set in accordance with the pay-setting rules and pay rates applicable to the employee's position of record (e.g., 5 CFR part 531, subpart B, for GS positions). An employee is not entitled to pay retention under subpart C of this part based on a reduction in basic pay resulting from waiver of the employee's grade retention entitlement under § 536.207(a)(5).

Subpart C—Pay Retention

SOURCE: 70 FR 31310, May 31, 2005, unless otherwise noted.

§ 536.301 Mandatory pay retention.

(a) Subject to the requirements in § 536.102 and this section, an agency must provide pay retention to an employee in a position under a covered pay system whose payable rate of basic pay otherwise would be reduced (after application of any applicable geographic conversion under § 536.303(a)) as a result of—

(1) The expiration of the 2-year period of grade retention under subpart B of this part;

(2) A reduction in force or reclassification action that places an employee in a lower-graded position when the employee does not meet the eligibility requirements for grade retention under subpart B of this part;

(3) A management action that places an employee in a non-special rate position or in a lower-paid special rate position from a special rate position;

(4) A management action that places an employee under a different pay schedule;

(5) A management action that places an employee in a formal employee development program generally utilized Governmentwide, such as upward mobility, apprenticeship, and career intern programs;

(6) The application of the promotion rule for GS employees under 5 U.S.C. 5334(b) and 5 CFR 531.214 when the employee's payable rate of basic pay after promotion exceeds the maximum rate of the highest applicable rate range;

(7) The application of the promotion rule for prevailing rate employees under 5 CFR 532.407 when the employee's payable rate of basic pay after promotion exceeds the maximum scheduled rate of the grade, as described in 5 CFR 532.407(b);

(8) A reduction or elimination of scheduled rates, special schedules, or special rate schedules, excluding—

(i) A statutory reduction in scheduled rates of pay under the General Schedule, including a reduction authorized under 5 U.S.C. 5303(b); or

(ii) A statutory reduction in a prevailing rate schedule established under